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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,677	07/27/2006	Chang-Ho Song	1012679-000125	8471

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EXAMINER	
DAVIS, DEBORAH A	

ART UNIT	PAPER NUMBER
1655	

NOTIFICATION DATE	DELIVERY MODE
06/11/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary	Application No.	Applicant(s)	
	10/587,677	SONG ET AL.	
	Examiner	Art Unit	
	DEBORAH A. DAVIS	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 February 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *7-13 and 15-18* is/are pending in the application.

4a) Of the above claim(s) *12 and 13* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7-11 and 15-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Applicants' response to the Office Action mailed on October 24, 2008 has been acknowledged. Currently, claims 7-13 and 15-18 are pending. Claims 12-13 are withdrawn and claim has been cancelled. Claims 17-18 are newly added claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 7-11 and 15-16 stand rejected under 35 U.S.C. 102(a) as being anticipated by (KR 2003/057509 A) for reasons of record and restated below:

The claims are drawn to an herbal extract having inhibitory activities against the degranulation and histamine release of mast cells, which is obtained by extracting Houttuynia cordata and Rubus coreanus with water or organic solvent. The reference of Su Jeong anticipates the instant claims by disclosing an herbal extract comprising houttuynia cordata, folium Mori, and rubi Fructus (unripened fruit of rubus coreanus) as active ingredients. The herbal extract is obtained by water extraction (paragraph 5, e.g.). The herbal extract is a health food and a crude drug and therefore qualifies as a pharmaceutical, as claimed. The herbal extract comprises of the same ingredients as claimed and therefore would inherently provide the functional effects as recited in the instant claims.

Therefore the cited reference is deemed to anticipate the instant claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7-11 and 15-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Su Jeong for reasons of record and restated below:

The reference of Su Jeong beneficially teaches a health food and crude drug in comprising an herbal extract that includes Houttuynia cordata, folium Mori, and rubi Fructus (unripened fruit of rubus coreanus) as active ingredients. The herbal extract is obtained by water extraction (paragraph 5, e.g.). The herbal extract is a health food and a crude drug and therefore qualifies as a pharmaceutical, as claimed. The herbal extract of the cited reference are the same ingredients as claimed and therefore would intrinsically provide the functional effects as recited in the instant claims.

The teaching of Su Jeong are set forth above but is silent with respect to the ratio of Houttuynia cordata to rubi Fructus (unripened fruit of rubus coreanus).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare an herbal extract comprising the claimed ratios and further comprising Mori folium as an active ingredient based on the beneficial teachings that the herbal extract is a health food and crude drug. The adjustment of particular

conventional working conditions (e.g. to determining suitable ratios of rubis Fructus to Houttuynia cordata) is deemed merely a matter of judicious selection and routine optimization, which is well within the purview of the skilled artisan.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of the evidence to the contrary.

Response to Arguments

Applicant's arguments filed February 24, 2009 have been fully considered but they are not persuasive of error.

> Applicants respectfully submit that the reference of Su Jeong does not in fact teach an herbal extract comprising *Houttuynia cordata, Folium Mori,* and *Rubi Fructus* (unripened fruit *of Rubus coreanus)* as active ingredients. Instead, Su Jeong teaches that after *Houttuynia cordata, Folium Mori,* and *Rubi Fructus* etc. are fermented, and extracted in water, pees[sic] are dipped in this fermented mixture and stabilized with drying (see page 2, lines 13-18, of the reference). That is, the reference discloses fermented pees[sic] which are dipped and fermented in an extract of fermented herbs such as *Houttuynia cordata, Folium Mori,* and *Rubi Fructus*. The reference does not teach or suggest that the herbal extract is a health food and a crude drug, but rather that the fermented pees[sic] are a health food and a crude drug. Therefore, the herbal extract could not qualify as a pharmaceutical, as recited in the present claims. In particular, the reference does not teach or suggest a composition comprising the herbal extract recited in the present claims in combination with a pharmaceutically acceptable carrier, excipient, or diluent.

In response, although the extract has been fermented and may comprise of other steps in the process, the reference still read on the claimed limitations because Jeong teaches a water extraction of the claimed ingredients. The “comprising" limitation of the

instant claims is open language and therefore does not prohibit other steps. The composition is a health food and therefore qualifies as a pharmaceutical. The food itself is a carrier of the composition. Therefore the rejection is maintained and made final over the instant claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBORAH A. DAVIS whose telephone number is (571)272-0818. The examiner can normally be reached on 8-5 Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Deborah A. Davis
Patent Examine, AU 1655
June 2009

/Christopher R. Tate/
Primary Examiner, Art Unit 1655